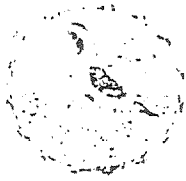


STATE AGENCIES

Comment Letters



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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August 17, 2004

Mr. Steve Spangle
U.S. Fish and Wildlife Service
2321 W. Royal Palm Road Ste 103
Phoenix, Arizona 85021

Re: Comments Regarding Final Draft Documents of the Lower Colorado River Multi-Species Conservation Program (DES 04 32)

Dear Mr. Spangle:

As you know, the Arizona Game and Fish Department (Department) has been actively involved in the Lower Colorado River Multi-Species Program (MSCP) since its inception almost a decade ago. As an applicant and active member of the Steering Committee, we are pleased to see the near completion of the MSCP documents. The MSCP brings together federal and non-federal parties in a collaborative effort to develop science-based conservation strategies for fish and wildlife resources along the Lower Colorado River. The Department supports the overall goals of the MSCP, which are to conserve habitats and work toward recovery of threatened and endangered species, as well as reduce the likelihood of additional species being listed; accommodate present and future water diversions, power production, and other uses to allow sustained economic growth for the States of Arizona, California, and Nevada; and provide long-term assurance for Endangered Species Act compliance to conduct water and other related activities on the Lower Colorado River.

AGFD-1

The Department believes that the implementation of the conservation measures described in Alternative 1 and issuance of a Section 10(a)(1)(b) permit to the non-federal applicants meets the objectives previously mentioned. We also believe this coordinated and comprehensive habitat and species conservation strategy will best meet these objectives over the long term.

AGFD-2

Since these documents have been through several administrative reviews, the Department believes our comments concerning the MSCP have been addressed. However, Alternative 4 focuses on off-river habitat conservation measures, and in our opinion, merits some additional consideration. For example, the conservation areas described in Alternative 4 could be used in conjunction with the on-river areas described in Alternative 1.

AGFD-3

Mr. Steve Spangle

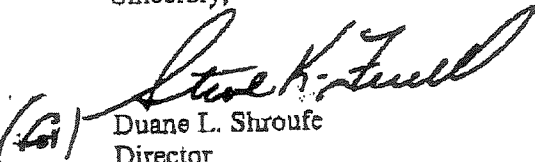
August 17, 2004

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The Department's page-specific comments are included as an attachment to this letter. We look forward to continuing to work with the U.S. Fish and Wildlife Service and other MSCP Steering Committee members as this process nears completion, and as implementation of the Habitat Conservation Plan begins. If you have any questions regarding these comments, please contact Charles Paradzick, Aquatic Habitat Specialist, at (602) 789-3608.

AGFD-4

Sincerely,


Duane L. Shroufe
Director

DLS:cep

cc: Bob Broscheid, Habitat Branch Chief
Larry Voyles, Regional Supervisor, Region IV, Yuma
Bob Posey, Regional Supervisor, Region III, Kingman
Charles Paradzick, Aquatic Habitat Specialist

Attachment

**Arizona Game and Fish Department
Comments regarding the Draft MSCP Documents**

August 17, 2004

Habitat Conservation Plan - Volume II

General Comments		
5-36 5-76 5-91		Ultimately, the goal of the MSCP is to create habitats that support diverse and abundant flora and fauna, mitigate for any impacts, maintain current species population levels, and provide opportunities for species population increase. To that end, consider within the adaptive management sections to test the assumption that salt cedar should always be removed or controlled in created habitats. In some cases, under or mid-story structure (foliage volume) could be enhanced for some target species (i.e., willow flycatcher). By allowing salt cedar to establish, it could reduce costs associated with high stem density planting required for suitable willow flycatcher nesting, create longer lasting habitat (due to lower height of mature tamarisk trees compared to cottonwood and willow), and due to its longer flowering season diversify and increase insect abundance over the breeding season - a conservation goal of the Plan. This concept does not need to be fully described and fleshed out, rather a bullet or note in the sections identified that support future research on the concept would give managers flexibility site design and maintenance.
5-93	Table 5-13	Changed Circumstances - Insufficient water for restoration actions. As described in the table, restoration water (assumed purchased or leased for restoration) could be reduced during shortages and available water (at a reduced amount) would be distributed among sites in consultation with the USFWS. This remedial measure could have a direct effect on habitat quality (e.g., decrease within-patch moisture) and long-term impacts (e.g., decreasing restoration success of some areas). In the worst case, a restoration site or revegetation action could fail and have to be recreated or replaced adding cost to the program and delaying offsetting mitigation actions. Thus, the parties should consider an agreement to give restoration water senior priority among users on the river (up to the ~57, 400 af), as this would protect all users from failure of mitigation efforts and provide assurance that water will be available to meet the HCP and coverage requirements.

AGFD-5

AGFD-6

Mr. Steve Spangle

August 17, 2004

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5-67 5-79	31 44	Project activities related to relict leopard frog should be coordinated through the Relict Leopard Frog Conservation Team: add reference within text: "Conservation activities will be coordinated through the Relict Leopard Frog Conservation Team and be consistent with the Conservation Strategy (Relict Leopard Frog Conservation Team <i>in prep</i>). (see citation in lit cited below)	AGFD-7
Specific Comments			
Page	Line	Comment	
2-16	15	Existing wells determined to be pumping Colorado River water - explain the process for determination of quantity of water (B. Werner indicated a ongoing USGS Study to quantify, and a cap on amount withdrawn).	AGFD-8
2-17	11-23	Clarify the actions and locations of the actions that are covered under the HCP. Our interpretation of this paragraph is that only those actions that occur below the top of the conservation pool of Lake Mead would be covered in the HCP. Actions that may influence water input into Lake Mead but occur upstream on the Virgin or Muddy River are not included.	AGFD-9
3-6	8	Salt cedar does not actively displace native vegetation, rather plant species composition shifts in response to alterations to the physical environment (i.e., decrease flooding, lower groundwater table). Suggest change to: " <i>The substantial changes to the hydrology of the Colorado River favored salt cedar establishment, while limiting recruitment and persistence of cottonwood-willow communities.</i> "	AGFD-10
3-11	22	Same note as 3-6: suggest change to: "... <i>Tamarix that have increased in abundance over the last 50 years, while the extent of native riparian vegetation has declined.</i> "	AGFD-11
3-11	40	Lack of flooding to remove salts is the ultimate cause of salinization of soil. Also, restoration plans later in the document acknowledge the need in some areas to flush soils to decrease salinity. Suggest deleting sentence: " Once established salt cedar... "	AGFD-12
3-14	7	"remaining" should be "remain"	AGFD-13
Table 4-2	4 th column	Add units - Elevation "(ft)"	AGFD-14
5-19	34	Conservation Area Site Selection - consider a bullet that allows managers to assess site selection from a landscape ecological perspective: Wiens (2002) describes this as "consider the ecological consequences of where things are located in space, where they are relative to other things, and how these relationships and their consequences are contingent on the characteristics of the surrounding landscape mosaic at multiple scales in time and space" Suggest text:	AGFD-15

Mr. Steve Spangle

August 17, 2004

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		<ul style="list-style-type: none"> "site location and objectives will be evaluated in context of landscape ecology, which considers the site's relationship with existing habitat and target species at multiple spatial and temporal scales" 	AGFD-15
5-24	41	Change June 30 to "August 30". Flycatcher can nest through August, and fledges may be present through September (this change would parallel text on p. 5-37, line 3).	AGFD-16
5-33	1	Insert text ... "reproductive success of the southwestern willow flycatcher (following criteria in the Recovery Plan; USFWS 2002b)."	AGFD-17
5-51	3	Change red to "yellow"	AGFD-18
5-76	29	Add text: "maintained (e.g., control of salt cedar) where appropriate, irrigation to maintain"... - See general comments.	AGFD-19

Programmatic Environmental Impact Statement - Volume I

General Comments (See comments for HCP above - EIS page numbers identified below)			
Table 2.1-9 (2-56) 2-59	Last row (21-22) 4	Tamarisk management (No change needed - wording captures recommendation) Change "would" to "could"	AGFD-20
2-70		Water allocation and priority - see HCP Comment	AGFD-21
2-84	17	Relict Leopard Frog Include reference to Conservation Team and Strategy and identify amount of funds provided (\$10,000/yr for 10 yrs)	AGFD-22
2-89	10	Include Reference to Team	
Specific Comments			
Page	Line	Comment	
2-63	25	Landscape Ecological perspective (See 5-19 HCP comments above) consider adding a similar bullet	AGFD-23
3.4-43	20	"2.4.1.2" - Check water allocation reference; should this reference the section on page 2-70?	AGFD-24
3.9-8	13	Resulting - change to "resulted"	AGFD-25
3.9-9	35	Can the ppm units also be listed as mg/L to coincide with the footnote - would put the ppm concentration in context.	AGFD-26
3.9-16	5	Change "2.1.1.7" to "2.1.1.4"	AGFD-27
3.9-18	3	Change "success" to "failure" to clarify that high selenium concentrations harm reproduction in birds and fish.	AGFD-28

Mr. Steve Spangle

August 17, 2004

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The Department has no comments concerning Volume III (Biological Assessment) or Volume IV (Appendices)

AGFD-29

Literature Cited

Wiens, J.A. 2002. Riverine landscapes: taking landscape ecology into the water. *Freshwater biology*. 47:501-515.

Relict Leopard Frog Conservation Team. *in prep*(2004). Conservation Agreement and Rangewide Conservation Assessment and Strategy for the Relict Leopard Frog (*Rana onca*).

TOTAL P.07



State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

Eastern Sierra Inland Deserts Region - R6
4665 Lampson Avenue, Suite J
Los Alamitos, CA 90720



August 18, 2004

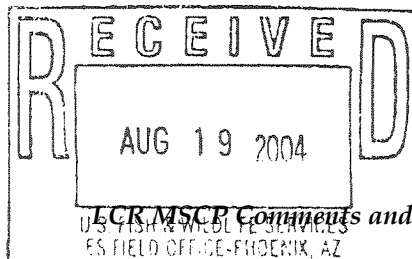
Mr. Steve Spangle
U.S. Fish and Wildlife Service
2321 W. Royal Palm Rd., Ste. 103
Phoenix, AZ 85021

Re: Lower Colorado River Multi-Species Conservation Program Draft
Programmatic Environmental Impact Statement/Environmental Impact
Report (No. 1999081029), Draft Habitat Conservation Plan, and
Biological Assessment

Dear Mr. Spangle:

The Department of Fish and Game (Department) appreciates this opportunity to comment on the above-referenced documents, and provides comments on fish and wildlife resources that may be affected by the implementation of the covered activities and conservation plan proposed as part of the Lower Colorado River Multi-Species Conservation Program (LCR MSCP). The overall goal of the LCR MSCP includes three primary components: 1) conserve habitat and work toward the recovery of threatened and endangered species, as well as reduce the likelihood of additional species listings under the Federal Endangered Species Act of 1973 (ESA); 2) accommodate current water diversions and power production and optimize opportunities for future water and power development, to the extent consistent with law; and 3) provide the basis of "take" authorization (legal compliance) pursuant to ESA. The LCR MSCP would be in effect for a period of 50 years. The planning area for the LCR MSCP is the historic floodplain from Lake Mead to the Southerly International Boundary between the United States and Mexico (near San Luis, Arizona) and areas with elevations up to and including the full pool elevations of Lake Mead, Lake Mohave, and Lake Havasu. Within the state of California, portions of Riverside, San Bernardino, and Imperial counties are included in the project area.

Within California, the Department has jurisdiction over the conservation, protection and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish and Game Code Section 1802). Also, the Department is a Trustee Agency under the California Environmental Quality Act (CEQA) Guidelines, responsible for ensuring that fish and wildlife resources of the State are addressed pursuant to CEQA (Cal. Code of Regs., tit. 14, § 15386). In these capacities, the Department provides the following comments on the above-referenced documents.



Conserving California's Wildlife Since 1870

To date, the Department has provided comments on most documents associated with the LCR MSCP. Through this correspondence, the Department has identified several issues that in the Department's view should be addressed in more detail in subsequent drafts of the LCR MSCP documents. The Department incorporates, by reference, the following correspondence: 1) Comments in Response to the Notice of Preparation (NOP) for the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) Draft Environmental Impact Report (DEIR) (August 28, 2000); 2) Comments in Response to the Draft Suggested Rewrite for Indirect Effects Analysis dated July 11, 2002 (August 8, 2002); 3) Comments in Response to the Addendum to the 2nd Draft Conservation Plan and Impact Assessment, 3rd Draft Impact Summary Table, Chapter 5 Adaptive Management Plan and Chapter 6 Monitoring and Research (October 30, 2002); 4) Draft Final Report on A Review of the Second Administrative Draft "Conservation Plan For the Lower Colorado River Multi-Species Conservation Program" (December 17, 2002); 5) Draft California Department of Fish and Game recommended mitigation concept for minimizing and fully mitigating impacts to covered species dependent on mesquite and mesquite mixed land cover types; 6) CDFG comments on the May 22, 2003 preliminary Draft LCR MSCP HCP (June 23, 2003) 7) Comments in Response to the Notice of Preparation of a Draft EIS/EIR for the Lower Colorado River Multi-Species Conservation Program (SCH # 1999061029) (November 26, 2003). Copies of these documents can be obtained by contacting the Department's Blythe Field Office at (760) 922-6508. We have reiterated some, but not all of our previous comments in this letter.

CDFG-1

Draft Programmatic Environmental Impact Statement/Environmental Impact Report

Page 1-5, section 1.1.4 (Use of the EIS/EIR)

The Department recommends including the covered activities as part of the action and analyzing the effects of those activities in this EIS/EIR. This analysis should include a comprehensive assessment of all environmental resources that could be affected by the covered activities.

CDFG-2

Page 1-7, section 1.2.2 (Actions for Which ESA Coverage is Requested)

The covered activities should be described in greater detail to allow for a comprehensive evaluation of effects to the environment.

CDFG-3

Page 1-16, sections 1.2.3 (Purpose of the EIS/EIR) and 1.2.4 (Scope of the EIS/EIR)

Please see comments for Page 1-5, section 1.1.4.

CDFG-4

Page 1-19, section 1.4.1.3 (Cooperating, Responsible, and Trustee Agency Actions)

As stated in various sections of the Draft Programmatic Environmental Impact Statement/Environmental Impact Report, Draft Habitat

CDFG-5

Conservation Plan, and Biological Assessment, the covered activities and conservation plan will cause "take" of State-listed threatened, endangered, and candidate species (e.g., entrainment at points of diversion, stranding of fish and desiccation of fish eggs, reduced survivorship and recruitment due to degraded or loss of requisite habitat conditions, increased competition, higher rates of predation/nest parasitism, direct destruction of nest and eggs, etc.). As a result, a CESA permit may need to be obtained from the Department. In addition, compliance with Fish and Game Code section 1600 et seq. may be required for covered activities and the conservation plan, as applicable. For issuance of a CESA permit and a streambed alteration agreement under Fish and Game Code section 1600 et seq., the Department would be acting as a responsible agency.	CDFG-5 con't
Page 1-20, section 1.4.2 (Future Permits and Approvals Required to Implement Specific LCR MSCP Projects) Please see previous comments for Page 1-19, section 1.4.1.3.	CDFG-6
Page 2-3, section 2.1 (Alternatives Carried Forward for Detailed Analysis) Because the Department believes that the covered activities should be considered as part of the proposed action, the range of alternatives considered in the EIS/EIR should focus on different strategies for implementing the covered activities, not merely for the Conservation Plan.	CDFG-7
Page 2-6, Table 2.1-2 The Department believes that the habitat-models most likely underestimate the extent of covered species habitat, thereby underestimating the extent of the impacts (see our comment on draft HCP, Page 3-19, Section 3.4.1.1). The Department recommends re-evaluating the adequacy of the habitat models and adding a monitoring component to the LCR MSCP in order to evaluate deviations from the hydrology model to ensure that unanticipated impacts will be mitigated. The LCR MSCP should identify and commit to a conflict resolution process in the event of disagreement between the agencies regarding the quantification of unforeseen impacts.	CDFG-8a
The Department believes that impacts noted as superscript d are significant, and should therefore be accounted for in delineating covered species impacts. The conservation plan should afford additional compensatory acreage to ensure that these impacts are mitigated.	CDFG-8b
Pages 2-75 - 86, section 2.1.1.5 (General Species Conservation Measures) The Department recommends that most, if not all, created habitat be established and managed on agricultural lands. As noted throughout the EIS/EIR there are several advantages to converting agriculture land to created habitat.	CDFG-9

AMM1 – The Department recommends that the conservation plan should strive to minimize and avoid impacts to all California special status species in all land cover types, not just the covered species. Many of the covered and other special status species, such as, but not limited, to the Crissal thrasher, loggerhead shrike, and the fully protected ringtail cat use salt cedar land cover as habitat.

CDFG-10

AMM3 – This measure needs to also apply to all special status bird species and birds protected under the Migratory Bird Treaty Act, birds in Fish and Game Code section 3505, and the incidental take of unlisted raptors or the destruction of their nests or eggs (Fish and Game Code, § 3503.5). This measure also needs to define the bird breeding season. The Department recommends that pre-activity surveys be conducted.

CDFG-11

Please clarify why this measure also applies to covered activities operation, maintenance, and replacement (OM&R) of drains and canals, when the covered activities are not part of the proposed action being analyzed in this EIS/EIR. This is confusing, as it leads the reader to believe that the covered activities are of part of the action covered in this EIS/EIR.

CDFG-12

As noted in our Page 1-19, section 1.4, 1.3 comments, these activities will result in "take" of state listed species, and may require the issuance of a CESA permit.

CDFG-13

AMM5 and AMM6 – Please see comments in AMM3.

CDFG-14

MRM1 – Except for the southwestern willow flycatcher, the distribution and status of the other covered species is not well known. The Department recommends that surveys and studies be implemented to better understand the distribution and status of all other covered species.

CDFG-15

MRM3 – Please provide details on the criteria that will be used to determine when this MRM will be implemented.

CDFG-16

Species-Specific Conservation Measures for Covered Species –
The Department does not agree that restoration and creation of a few choice habitats will necessarily benefit numerous species and that these created habitats will benefit and mitigate impacts to all covered species. The extent to which neotropical migrant stream/riparian species will benefit is uncertain, and, to our knowledge no data exist demonstrating that stream or cottonwood-willow restoration efforts will increase stream or riparian invertebrate production, or the rates of ecological adjustment of restored systems. The amount of conservation and the types of conservation measures should be based on an understanding of the complex nature of ecosystems and the niche required.

CDFG-17

The conservation plan needs to develop specific criteria that will be used to measure the amount of species habitat created. In addition, we suggest that you define the term "habitat."

CDFG-18

Water diversions at storage reservoirs and diversion reservoirs are included as California covered activities. The Department believes that installation of fish screens may be necessary to minimize and fully mitigate impacts, pursuant to Fish and Game Code, Section 2081, to covered fish species resulting from entrainment at some diversion points. Requirements and conditions of the Department's Statewide Fish Screening Policy (June 2001) and the Department's Fish Screening Criteria should be taken into account. Those documents are available on the Department's website, as follows:

CDFG-19

Statewide Fish Screening Policy is located at
<http://www.iep.ca.gov/cvffrt/DFGpolicy.htm>

Fish Screening Criteria is located at
<http://www.iep.ca.gov/cvffrt/DFGCriteria2.htm>

As noted in various sections of the Draft EIS/EIR and Draft HCP, rates of entrainment of covered fish species will increase at points of diversion with implementation of augmentation measures. As such, the Department believes that it is appropriate to initiate discussions with California water diverters on the issue of fish screen installation, pursuant to Fish and Game Code, Sections 5980 and 5981.

To obtain Incidental Take Authorization from the Department, pursuant to Fish and Game Code, Section 2081, impacts to state-listed species must be minimized and fully mitigated, and meet all other CESA requirements.

CDFG-20

DETO2 – Please add minimization and avoidance measures. Please see our comments for AMM3.

CDFG-21

Page 2-86 – 88, section 2.1.1.6 (Timing of the Implementation of Conservation Measures)

CDFG-22

We are concerned that the timing of implementing the conservation measures does not fully consider the time that will be needed to establish fully functioning covered species habitat. This aspect is critically important considering that impacts to covered species may occur prior to or concurrently with implementation of conservation measures. The conservation measures should be implemented before the impacts occur, to ensure that fully functioning habitat is created.

Page 3.0-1, section 3.0 (Affected Environment and Environmental Consequences)

CDFG-23

In the Department's view, the covered activities should be considered as part of the proposed action. As such, the covered activities should be analyzed in this chapter to evaluate impacts to all environmental resources that may be affected by these activities.

Page 3.4-1, section 3.4 (Biological Resources)

CDFG-24

This section needs to make clear that the identified impacts are impacts to only the covered species habitat (delineated from the species habitat models and the impact analysis), and not to all riparian and marsh cover types and associated resources. The extent of riparian (> 70,000 acres) and marsh (> 8,000 acres) cover types that will be affected by covered activities is substantially greater than the impacts identified here. If the intended purpose of this document was to analyze the effects of the covered activities on all environmental resources this needs to be clearly stated, and the analysis needs to be updated so that all resources are addressed.

The term "habitat" as it is used in this section is misapplied throughout the document. The document improperly uses "habitat" and "land cover type" interchangeably. A clear distinction needs to be maintained between species habitat and land cover type. See our comment below on the Draft HCP, Page 3-19, Section 3.4, for the Department's recommended definition of "habitat." "Land cover type" can be defined as the dominant feature of land surface discernable from aerial photographs, defined by vegetation, water, or human uses.

CDFG-25

Page 3.4-29 - 41, section 3.4.2.1 (Alternative 1: Proposed Conservation Plan)

CDFG-26

The title of this section does not correspond to the action proposed in this EIS/EIR. Please revise the title to read: "Alternative 1: Proposed Conservation Plan and Issuance of an ESA section 10 (a)(1)(B) Permit."

The Department recommends that the impact analysis be expanded to include special status species, as well as the covered species. Covered activities should also be addressed here.

CDFG-27

The Department believes that the amount of "take" resulting from the covered activities will be greater than that identified and summarized in Table 2.1-2. Please see our previous comments for Page 2-6, Table 2.1-2 and *Species-Specific Conservation Measures for Covered Species*.

CDFG-28

The Department does not agree with the following statement, "*Habitat loss would generally occur as small patches scattered along the length of the LCR, which would affect few individuals (of both covered and non-covered species) at any one location and increase the likelihood that displaced*

CDFG-29